In the High Court of Uttaranchal, at Nainital.

Civil Writ Petition No. 1253 (M/S)/2005

Balmu S/o Nainu
R/o Village Raithal, Patti
Taknour, Tehsil Bhatwari,
District Uttarkashi …… Petitioner.

Versus

1- The District Judge,
Uttarkashi, District
Uttarkashi.

2- Kundanu S/o Almu
R/o Village Raithal Patti,
Taknour, Tehsil Bhatwari
District Uttar Kashi …… Respondents.

Sri H.M. Raturi, Advocate for the petitioner.
Sri V.K. Bisht, Senior Advocate, assisted by
Sri Lokendra Dobahal, learned counsel for the
Respondent No. 2.
Sri Nand Prasad, learned S.C. for respondent No. 1.

Hon'ble B.C. Kandpal, J.

Dated: 04-03-2006

By way of this petition the petitioner has sought the direction in the nature of certiorari quashing the suit proceedings of original suit No. 29/2005, pending before the Court of District Judge, Uttarkashi.

2- Heard Sri H.M. Raturi, learned counsel for the petitioner and Sri V.K. Bisht, Senior Advocate, assisted by Sri Lokendra Dobhal, learned counsel for the respondent No.2 and Sri Nand Prasad, learned Standing Counsel for respondent No. 1.

3- The record reveals that the suit was filed by the respondent No. 2 before the court of District Judge, Uttarkashi and after institution of the suit an application for ad interim injunction was also filed. The petitioner filed objection before the court below and the District Judge after hearing and perusing the record allowed the application for ad interim injunction by way of the impugned order dated 18-10-2005.

4- Feeling aggrieved by the aforesaid order the petitioner has approached this court by way of this writ petition.

5- Learned counsel for the petitioner has argued that the suit filed by the respondent No. 2 before the court below is not cognizable by civil court and is barred by the provisions of Section 331 of the U.P.Z.A. and L.R. Act.

6- Having considered the arguments advanced by the learned counsel for the parties, I am of the view that this writ petition is devoid of any force.

7- The petitioner may raise this ground before the court below at the time of framing the issues. The court below will decide the matter in accordance with law after hearing the parties and perusing the evidence on record.

8- Further this petition filed before this court appears to be misconceived because the petitioner instead of filing any appeal against the impugned order, has straightaway approached this court.

9- In the aforesaid circumstances, I do not find any force in this writ petition. The writ petition lacks merit and is liable to be dismissed.

10- Accordingly the writ petition is dismissed.

11- However, the petitioner is at liberty to raise the point of jurisdiction before the court below at an appropriate stage.

(B.C. Kandpal, J.)

ISB